

STATE AUDITOR'S OFFICE

LEAVE INTERPRETATION 79-01¹

TO: Human Resources Directors

DATE: July 2, 1979

SUBJECT: Military leave and its relation to sick leave, vacation leave, and leave without pay.

Question:

At the time a state employee goes on military leave for a period exceeding the annual, two-week reserve training period, is the employee for purposes of accrued vacation and sick time considered a terminated employee?

Answer:

Absent the employee's resignation, the situation does not result in termination of the employee for purposes of settlement of leave accounts. The 15 days of military leave (Texas Government Code, Section 431.005) authorized each federal fiscal year will support a three-week active duty training period, and after exhausting the 15 days of military leave the employee may use accrued vacation leave to the extent available or be placed on a leave-without-pay-status (or a combination of the two) for the remainder of the active duty period (Texas Government Code, Section 661.909).

Question:

If it is determined that an employee on military leave may be paid a lump sum payment for unused accrued vacation time, what is the status of his or her accrued unused sick leave time?

Answer:

According to Texas Government Code, Section 661.062, an employee would have to separate from state employment in order to be entitled to be paid for the employee's accrued balance of the employee's vacation time as of the date of separation.

There is no authority to pay out an employee's accrued but unused sick leave upon termination [Opinion, Texas Office of the Attorney General, No. GA-0201 (2004)]. However, an employee who separates from state employment and is re-employed by the State within 12 months is entitled to have his or her sick leave balance restored (Texas Government Code, Section 661.205).

Question:

Would the unused sick leave time be retained in the timekeeping records to be credited to an employee's time records at such time the employee might be reinstated?

Answer:

Provided that the employee does not separate from state employment, the employee's sick leave balance should remain within the timekeeping records. Additionally, an employee on military leave accrues state service credit for purposes of longevity pay and vacation and sick leave. While the employee accrues vacation and sick leave while on military leave, the time is not credited until the employee returns to state employment (Texas Government Code, Section 661.904).

Question:

If it is determined that accrued sick leave would be carried forward to such time the employee is reinstated, how may an agency make a lump sum payment for unused vacation when the law providing for a lump sum payment is only for employees who have terminated state employment?

Answer:

There is no lawful way to make a lump sum payment to an employee for accrued but unused vacation time unless the employee terminates from state employment (Texas Government Code, Section 661.062).

Question:

If it is determined that making a lump sum payment for unused vacation time for an employee on military leave is not legal and, therefore, this time would continue to be carried on the timekeeping records, what method would be applied in the event the amount of accrued unused vacation time exceeded the maximum hours to be carried forward from one fiscal year to another as provided for in the Texas Government Code?

Answer:

If such a situation should occur, the employee's leave record should be administered in accordance with the same authority and in the same manner as if the employee were not serving on active duty [Texas Government Code, Section 661.152 (d)].

Question:

If it is determined that unused sick leave shall be retained in the timekeeping records to be resumed at the time the employee is reinstated from military leave and during the period of

military leave the employee dies, would payment to the employee's estate be required for the amount of unused sick leave as provided for in the Texas Government Code?

Answer:

Texas Government Code, Section 661.003, states that the estate of an employee who dies while employed by the State is entitled to payment for all accumulated annual leave and one-half of accumulated sick leave or 336 hours, whichever is less.

Therefore, if the employee meets the requirement of being employed by the State of Texas at the time of death, even though the employee is on a leave-without-pay status, payment to the estate should be made [Texas Government Code, Section 661.909 (h)].

Question:

Does an employee receive full pay for only 15 days of reserve training or for the full period of active duty time spent with the National Guard?

Answer:

A state employee who is called to active duty as a member of the state military forces by the Governor because of an emergency is entitled to receive paid emergency leave without loss of military leave or annual leave (Texas Government Code, Section 431.0825). This leave will be provided without a deduction in salary (Texas Government Code, Section 661.903).

Question:

Is it possible that a state employee on military leave is treated in the question of unused vacation time as a terminated employee, while on the other hand, for purposes of unused sick leave would not be treated as a terminated employee?

Answer:

An employee on military leave remains a state employee, unless the employee terminates from state employment (Texas Government Code, Section 431.005).

¹ This is an updated version of this State Auditor's Office Leave Interpretation. It was updated in 2011 to primarily reflect statutory changes. The previous version can be found at http://www.hr.sao.state.tx.us/Statutes/LI79-01_old.html